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**Richard Delong, Jr. d/b/a Pacific Coatings Company and International Brotherhood of Painters & Allied Trades, Local 1595, AFL-CIO.**  
Cases 31-CA-20956 and 31-CA-21040

March 8, 1996

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon charges and amended charges filed by the Union on December 21, 1994, and February 6 and 24, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on March 28, 1995, against Richard Delong, Jr. d/b/a Pacific Coatings Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On December 11, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On December 13, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 17, 1995, notified the Respondent that unless an answer were received by July 21, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent is now and has been at all material times a sole proprietorship with an office and principal place of business in Mission Hills, California, where it is engaged in business as a painting contractor. The Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$250,000 and sells goods or services valued in excess of \$50,000 to customers or business enterprises, including but not limited to work for the City of Long Beach, Los Angeles Unified School District and the University of Southern California, located within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

About December 8, 1994, the Respondent interrogated employees regarding their support for, or membership in, a union; informed employees that they would have been hired earlier but for their suspected support for, or membership in, a union; suggested to employees that support for, or membership in, a union could cause them physical violence; and told employees that the Respondent would not have anything to do with employees who were associated with the Union.

Between December 2 and 5, 1994, the Respondent refused to consider for hire and/or refused to hire Joe Looper and Donald Looper, and, about December 9, 1994, laid off its employees Joe Looper and Donald Looper, all because of their support for, or membership in, a union and/or because they engaged in other activities for the purpose of collective bargaining or other mutual aid or protection.

### CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained and coerced, and is interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By refusing to consider for hire, and/or refusing to hire, and by laying off, Joe Looper and Donald Looper, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of employees, thereby discouraging member-

ship in a labor organization and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to consider for hire and/or refusing to hire, and by laying off, Joe Looper and Donald Looper, we shall order the Respondent to offer them immediate and full reinstatement to their former jobs and/or the jobs which they would have had but for the discrimination against them<sup>1</sup> or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoffs, and to notify the discriminatees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Richard Delong, Jr. d/b/a Pacific Coatings Company, North Hills, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their support for, or membership in, a union.

(b) Informing employees that they would have been hired earlier but for their suspected support for, or membership in, a union.

(c) Suggesting to employees that support for, or membership in, a union could cause them physical violence.

(d) Telling employees that it would not have anything to do with employees who were associated with

<sup>1</sup>We shall leave to compliance the matter of whether these discriminatees would have had other jobs than the jobs they had prior to their December 9, 1994 layoff, but for the December 2 and 5, 1994 discrimination against them.

the International Brotherhood of Painters & Allied Trades, Local 1595, AFL-CIO.

(e) Refusing to consider for hire and/or refusing to hire employees or laying them off, because of their support for, or membership in, a union and/or because they engage in other activities for the purpose of collective bargaining or other mutual aid or protection.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Joe Looper and Donald Looper immediate and full reinstatement to their former jobs and/or the jobs which they would have had but for the discrimination against them or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Expunge from its records any and all references to the unlawful layoffs and notify the discriminatees in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its principal place of business copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 8, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their support for, or membership in, a union.

WE WILL NOT inform employees that they would have been hired earlier but for their suspected support for, or membership in, a union.

WE WILL NOT suggest to employees that support for, or membership in, a union could cause them physical violence.

WE WILL NOT tell employees that we would not have anything to do with employees who were associated with the International Brotherhood of Painters & Allied Trades, Local 1595, AFL-CIO.

WE WILL NOT refuse to consider for hire and/or refuse to hire employees or lay them off, because of their support for, or membership in, a union and/or because they engage in other activities for the purpose of collective bargaining or other mutual aid or protection

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Joe Looper and Donald Looper immediate and full reinstatement to their former jobs and/or the jobs which they would have had but for the discrimination against them or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL expunge from our records any and all references to the unlawful layoffs and notify Joe Looper and Donald Looper in writing that this has been done.

RICHARD DELONG, JR. D/B/A PACIFIC  
COATINGS COMPANY